ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CA08-360

October 22, 2008

	APPEAL FROM THE JOHNSON COUNTY CIRCUIT COURT,
ERIC COWELL APPELLANT	[CR-2004-90]
V.	HONORABLE DENNIS CHARLES SUTTERFIELD, JUDGE
CHRISTINA COWELL APPELLEE	AFFIRMED

Appellant, Eric Cowell, and appellee, Christina Cowell Lloyd, were divorced by decree entered on December 16, 2004. At the time of the divorce, the parties agreed to joint custody of their two daughters, Khamree (D.O.B. 7-11-98) and Kyerra (D.O.B. 8-18-2000). In June 2006, custody disputes arose between the parties based upon the presence of bruises on the older child's back and bottom. Appellant sought "ex parte" custody of the children. Each party soon thereafter filed petitions seeking sole custody of the children. While those disputes were underway in the domestic-relations division, appellant's counsel initiated a FINS case in the juvenile division. The two cases were consolidated in domestic-relations division. The trial court awarded custody of the

children to appellee and also awarded her attorney's fees. This appeal followed. We affirm.

October 9, 2007 Order Changing Custody

In its order of October 9, 2007, awarding custody of the children to appellee, the trial court found:

> The court finds that Eric Cowell's request for an award of full legal custody should be denied. While the court finds that there have been substantial and material changes in circumstances since the last permanent order of custody, the court finds that, viewed in their totality, these changed circumstances do not favor Mr. Cowell. Indeed, the evidence establishes that Eric Cowell has engaged in a malicious course of conduct designed to harass, intimidate and wrongfully interfere with Christina Lloyd's duties as primary custodian. This course of conduct includes, but is not limited to, filing or causing to be filed numerous false reports and allegations of child abuse against the defendant, or her spouse; threats to vilify the defendant in court should she oppose his attempts to obtain custody; initiating a Family in Need of Services case against the defendant when he well knew this court already had a custody case scheduled on this matter and he could have sought emergency relief from the court where the case was already pending; making derogatory remarks about the defendant; coming to the defendant's residence uninvited and entering her residence without permission; and describing her modeling career as pornographic when it clearly is not.
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> THE COURT FINDS THAT IT IS IN THE BEST INTERESTS OF THE MINOR CHILDREN FOR THE DEFENDANT, CHRISTINA COWELL LLOYD, TO HAVE SOLE LEGAL PRIMARY CARE AND CUSTODY OF THE PARTIES' MINOR CHILDREN. UPON PRESENTATION OF THIS ORDER TO ANY LAW ENFORCEMENT OFFICE IN THE STATE OF ARKANSAS THAT SHALL ASSIST THE DEFENDANT IN ENFORCING THIS ORDER OF CUSTODY.
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> The court found the testimony of the defendant more credible and convincing than that of the plaintiff upon those facts on which they were opposed. In making this decision, the court has carefully observed the witnesses and considered their credibility.

The trial court made additional findings of fact, which can be summarized as follows: 1) that appellee is fit and proper to have custody, 2) that neither appellee nor her spouse has committed child abuse, 3) that appellee is of good moral character and has no debilitating medical problems, 4) that appellee's schedule works better to be with the children than appellant's, 5) that appellee's spouse is fit and proper for the children to be around, 6) that appellee demonstrates a more cooperative spirit in facilitating visitation, 7) that while both parties have shown an interest in the children's educational needs, the appellee has been more involved, and 8) that appellant wrongfully withheld child-support payments for a period of time prior to the hearing.

Standard of Review

As we explained in *Coffee v. Zolliecoffer*, 93 Ark. App. 61, 67, 216 S.W.3d 636, 641 (2005):

> The standard of review in child-custody appeals is well settled. We review the evidence de novo, but we will not reverse the findings of fact unless it is shown that they are clearly contrary to the preponderance of the evidence. *Thompson v. Thompson*, 63 Ark. App. 89, 974 S.W.2d 494 (1998). We also give special deference to the superior position of the trial court to evaluate and judge the credibility of the witnesses in child-custody cases. *Hamilton v. Barrett*, 337 Ark. 460, 989 S.W.2d 520 (1999). A finding is clearly against the preponderance of the evidence when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Hollinger v. Hollinger*, 65 Ark. App. 110, 986 S.W.2d 105 (1999). *See also Dunham v. Doyle*, 84 Ark. App. 36, 129 S.W.3d 304 (2003). With regard to errors of law, however, no deference is given to the trial court's decision. *See Sanford v. Sanford*, 355 Ark. 274, 137 S.W.3d 391 (2003).

For his first point of appeal, appellant contends that the trial court's finding that he "engaged in a malicious course of conduct designed to harass, intimidate and wrongfully interfere with the appellee, Christina Lloyd's duties as primary custodian" was clearly against the preponderance of the evidence. We disagree.

In making this finding, the trial court explained that appellant's malicious course of conduct included, but was not limited to: 1) filing false reports/allegations of child abuse, 2) threats of vilification, 3) filing a FINS case, 4) making derogatory remarks, 5) entering appellee's residence without permission, and 6) mischaracterizing appellee's actions as pornographic. Appellant contends that the trial court clearly erred in the listed examples. We find no clear error. First, before briefly addressing each example, we note with respect to the trial court's overall findings that the trial court specifically found that appellee's testimony was more credible than that of appellant.

1) Filing false reports/allegations of child abuse. In determining that appellant filed or caused to be filed numerous false reports of child abuse against appellee and or her spouse, the trial court had appellant's own testimony supporting that conclusion. When asked about his involvement in making these reports, appellant responded that he was "not sure how many DHS claims he had made against Christina and Roger," and that he had reported "bruises and anything physical" on his daughters. He also stated that his mother might have called in a report to DHS.

2) Threats of vilification. Appellee testified that appellant told her that if she did not agree to stop the custody action that "it's gonna be a bloodbath in court." Appellee's testimony was supported by Amanda Shelton, a family counselor. Shelton testified that appellant told appellee that "if you're gonna do it, then I'm bringing everything out. It doesn't matter. I'm bringing it all out."

3) Filing the FINS case. It is true that appellant's counsel "took the blame" for filing the FINS case while the domestic-relations case was already before the trial court, but that does not negate the fact that counsel acts as an agent for the client. More importantly, this is one of several factors listed by the trial court in making its finding that appellant engaged in a malicious course of conduct against appellee.

4) Making derogatory remarks. Appellee testified that she had heard appellant make derogatory comments about her in front of the children. The only example she could remember was that appellant had called her a "crazy b★★★★" in front of the children.

5) Entering appellee's residence uninvited/without permission. Appellee testified that during periods when she and appellant were fighting, he would come to her house and walk in without invitation; that he would just come over to her house; and that one time he fell asleep at her house for two hours.

6) Mischaracterizing appellee's actions as pornographic. We have reviewed the photos that appellant contends are pornographic. The trial court and a sheriff's investigator determined that they were not. In her brief, appellee acknowledges that the photos may

not be the most tasteful poses in the world, but that they do not constitute pornography. We agree.

In summary, following our *de novo* review of the evidence, we are not left with a definite and firm conviction that the trial court made a mistake in finding that appellant engaged in a malicious course of conduct against appellee.

For his second point of appeal, appellant contends that the trial court "erred in not awarding custody to the appellant as the evidence clearly showed that it was the appellee that was interfering with custody in a malicious way." In making this argument, appellant summarizes the testimony that he contends establishes that appellee was the one engaging in a malicious course of conduct. At the conclusion of the recitation, he states, "The award of custody to the Defendant in light of all the testimony and evidence should leave this court with a definite and firm conviction that a mistake has been made and the award of custody changed to the appellant, Mr. Eric Cowell." However, appellant does not fashion a convincing argument under this point and neither does he cite any legal authority. As we earlier explained, our review of the evidence does not leave us with a definite and firm conviction that a mistake was made in awarding custody of the children to appellee.

For his third point of appeal, appellant contends that the trial court "erred in allowing opposing counsel to continually bring into evidence an allegation of contempt by opposing counsel and her client, even though ruled upon and objected to repeatedly,

throughout the entire trial, thus taking the focus off the best interest of the children." The allegation of contempt against appellant and his attorney was that they had violated the juvenile-division judge's order about not talking to the parties concerning what the minor child had testified about in the FINS hearing. Appellant's argument seems to be that raising these matters at the custody hearing "was improper and this clouded the trial." Appellant further contends that a portion of appellee's testimony established that she was also talking to the child about what was said in the FINS case. We dispose of the third point by noting that appellant has not developed an argument nor cited us to any cases that convince us that these series of events constitute error by the trial court or provide any basis for reversing the trial court's decision.

For his final point of appeal, appellant contends that the trial court "erred in finding that over $15,000 was a reasonable amount of attorney fees." We do not address this argument because it was not properly preserved. The only objection that appellant raised at trial with respect to appellee's introduction of evidence concerning the attorney's fees dealt with the fact that one bill had already been submitted. He did not object to the reasonableness of the fees at trial.

Moreover, on October 16, 2007, appellant filed a motion for reconsideration concerning the attorney's fees, which was denied by the trial court in an order entered on November 21, 2007. However, in his notice of appeal, filed on October 23, 2007, appellant listed only the October 9, 2007 order. The notice of appeal was never amended

to appeal from either a deemed denial of the motion to reconsider or the actual denial of the motion. Consequently, we are without jurisdiction to address the attorney-fee issue. *Rose Care, Inc. v. Ross*, 91 Ark. App. 187, 209 S.W.3d 393 (2005) (appellate court did not reach issues raised solely in new-trial motion where notice of appeal did not mention the deemed denial of the motion or that an appeal was being taken from any order other than the original judgment).

Affirmed.

BIRD and GRIFFEN, JJ., agree.